

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALTON D. BROWN,)	
)	
Plaintiff,)	2:10cv1398
)	Electronic Filing
vs.)	
)	Judge Cercone
JEFFREY A. BEARD, et al.,)	Magistrate Judge Lenihan
Defendants.)	

MEMORANDUM ORDER

The above captioned case was initiated by the filing of a Motion to Proceed *In Forma Pauperis* (ECF No. 1) on October 22, 2010, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On October 25, 2010, the magistrate judge filed a Report and Recommendation recommending that the Motion to Proceed *In Forma Pauperis* be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed for Plaintiff's failure to pay the filing fee, with the right of Plaintiff to reopen by paying the full \$350.00 filing fee within sixty (60) days (ECF No. 2). Plaintiff filed Objections to the Report and Recommendation on November 4, 2010 (ECF No. 3).

Plaintiff's objections do not undermine the recommendation of the magistrate judge. His reliance on Gibbs v. Cross, 160 F.3d 962, 965 (3d Cir. 1998), is unavailing. Gibbs neither reflects the applicable standards of law governing the matter at hand, see Abdul-Akbar v. McKelvie, 239 F.3d 307, 312-13 (3d Cir. 2001) (*en banc*), nor reflects a factually analogous basis for satisfying those standards. See id.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 19 day of November, 2010,

IT IS HEREBY ORDERED that the Motion to Proceed *In Forma Pauperis* is **DENIED** in accordance with 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that this action is **DISMISSED** for Plaintiff's failure to pay the filing fee, with the right of Plaintiff to reopen by paying the full \$350.00 filing fee within sixty (60) days.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF. No. 2) dated October 25, 2010, as augmented herein is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.



David Stewart Cercone
United States District Judge

cc: Alton D. Brown
DL-4686
SCI Graterford
Box 246
Graterford, PA 19426-0246

(*Via First Class Mail*)